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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/098,613	03/18/2002	Paul Smith	P 0283285/PTFE-CIP-3	3673
909	7590	05/05/2004	EXAMINER	
PILLSBURY WINTHROP, LLP			CHEN, VIVIAN	
P.O. BOX 10500				
MCLEAN, VA 22102			ART UNIT	PAPER NUMBER
			1773	

DATE MAILED: 05/05/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/098,613	SMITH ET AL.	
	Examiner	Art Unit	
	Vivian Chen	1773	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 February 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-18,20-22 and 27 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-16,20-22 and 27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

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## DETAILED ACTION

1. Claims 19, 23-26, 28 have been cancelled by Applicant.

### *Election/Restrictions*

2. Applicant's election of the species of claim 16 in Paper No. 2/17/2004 is acknowledged.

Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

3. Claims 17-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 2/17/2004.

### *Double Patenting*

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

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5. Claims 1-16, 20-22, 27 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over:

(a) claims 1-35 of U.S. Patent No. 6,531,559 (SMITH ET AL); or

(b) claims 1-49 of U.S. Patent No. 6,548,612 (SMITH ET AL),

for the reasons stated in the previous Office Action.

The above patents each claim a melt-processible fluoropolymer with the melt flow index values, melting point, comonomer content, elongation or strain at break, crystallinity, and other recited features. However, while the above patents do not explicitly claim properties such as strain at break and tensile strength, since the tetrafluoroethylene copolymers claimed in the above patents are substantially similar in composition and numerous physical properties as those recited in the present application claims, the Examiner has reason to believe that the polymers claimed in the above patents have strain at break, tensile strength and other properties which are substantially similar to those recited in the present application claims, therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594. The Examiner also has reason to believe that the mol% of comonomer recited in the above patents are comparable to and/or inclusive of the wt% range recited in claim 1.

6. Claims 1-16, 20-22, 27 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 68-129; 135-143 of copending Application No. 09/505,279 (allowed), for the reasons stated in the previous Office Action.

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The above copending Application claims a melt-processible fluoropolymer with the melt flow index values, stress at break, melting point, comonomer content, elongation or strain at break, stress at break, and other recited features. However, while the above patents do not explicitly claim properties such as crystallinity, since the tetrafluoroethylene copolymers claimed in the above copending Application are substantially similar in composition and numerous physical properties as those recited in the present application claims, the Examiner has reason to believe that the polymers claimed in the above patents have crystallinity and other properties which are substantially similar to those recited in the present application claims, therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594. The Examiner also has reason to believe that the mol% of comonomer recited in the above patents are comparable to and/or inclusive of the wt% range recited in claim 1.

This is a provisional obviousness-type double patenting rejection.

***Claim Rejections - 35 USC § 103***

7. Claims 1-16, 20-22, 27 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 00/08071 (hereinafter WO '071).

WO '071 discloses a melt-processible tetrafluoroethylene polymer with the recited melt flow index values, crystallinity, melting point, comonomer content, and other recited features, and articles made therefrom. However, while the reference does not explicitly claim the recited mechanical properties such as strain or elongation at break or stress at break or tensile strength, since the tetrafluoroethylene copolymers disclosed in the above reference are substantially similar in composition and numerous physical properties as those recited in the present

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application claims, the Examiner has reason to believe that the polymers claimed in the above reference has mechanical properties which are substantially similar to those recited in the present application claims, therefore the Examiner has basis for shifting the burden of proof to applicant as in *In re Fitzgerald et al.*, 205 USPQ 594. The Examiner also has reason to believe that the mol% ranges of comonomer recited in the above patents are comparable to and/or inclusive of the wt% range recited in claim 1.

It would have been obvious for one of ordinary skill in the art at the time the invention was made to utilize a melt-processible PTFE polymer known to have desirable, superior mechanical properties as the polymers disclosed in WO '071 to make conventional melt-processed articles in order to make durable, strong products.

*Response to Arguments*

8. Applicant's arguments filed 2/17/2004 have been considered but they are not persuasive.

(A) Applicant's arguments regarding the alleged inconsistency in the Examiner's rejection regarding the obviousness of the claimed polymer and the use of known polymer is unclear and confusing. However, Applicant's arguments are now considered moot, in view of Applicant's amendments which now claim an article and the Examiner's rephrased rejection clearly rejects the claimed articles as being obvious over the teachings of WO '071, which disclose melt-processed articles made from polymers substantially similar to those recited in the claims. Applicant has not provided any probative evidence or persuasive arguments to the contrary.

*Conclusion*

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,



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however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vivian Chen whose telephone number is (571) 272-1506. The examiner can normally be reached on Monday through Thursday from 8:30 AM to 6 PM. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Paul Thibodeau, can be reached on (571) 272-1516. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

The General Information telephone number for Technology Center 1700 is (571) 272-1700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 29, 2004



Vivian Chen  
Primary Examiner  
Art Unit 1773